

BEFORE THE DIVISION OF MEDICAL QUALITY
BOARD OF MEDICAL QUALITY ASSURANCE
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation and
Petition to Revoke Probation
Against:

MICHAEL L. WYMORE, M.D.
2705 "K" Street
Sacramento, CA

Respondent.

NO. D-2043

N-10179

DECISION

This matter came on for hearing on July 1, 1978 in Sacramento, California, before a quorum of the Division of Medical Quality consisting of David Axelrad, M.D., Michael J. Carella, Ph.D., Margaret Castro, Barry Warshaw, M.D., members, and Eugene C. Feldman, M.D., Division President. Rudolf H. Michaels, an Administrative Law Judge of the Office of Administrative Hearings, presided.

The complainant was represented by Joel S. Primes, Deputy Attorney General.

The respondent was present and was represented by Conrad Lee Klein, his attorney.

Evidence was received, the hearing was closed and the matter was submitted.

FINDINGS OF FACT

I

Robert Rowland made the Accusation and Petition to Revoke Probation in his official capacity of Executive Director of the Board of Medical Quality Assurance of the State of California (hereafter referred to as the "Board").

II

On September 8, 1969, respondent Michael L. Wymore, M.D., was issued Physician's and Surgeon's Certificate No. A-23463 by the Board of Medical Examiners, authorizing him to practice

medicine and surgery in the State of California. At all times material herein, respondent was, and he now is, so licensed.

III

On April 20, 1977, the Board issued its decision finding respondent to have violated the provisions of Sections 2390 and 2391.5 of the Business and Professions Code and Section 11173(a) of the Health and Safety Code, constituting unprofessional conduct within the meaning of those sections and warranting disciplinary action under the provisions of Section 2361 of the Business and Professions Code. Respondent's Physician's and Surgeon's Certificate was suspended for a period of 180 days, but execution of the order was stayed and respondent was placed on probation to the Board for a period of five years upon terms which included the following:

"1. Respondent shall comply with all laws of the United States and of the State of California and its political subsidiaries and all rules and regulations of the Board of Medical Quality Assurance.

. . .

5. Respondent shall comply with the established procedures of any hospital or institution where he is employed for control of controlled substances and/or dangerous drugs. Should such hospital or institution require signatures or counter signatures on control documents Respondent shall be personally responsible to see that such signatures are obtained and any failure to do so shall constitute a violation of this term of probation.

6. Respondent shall not self use any controlled substances and/or dangerous drugs unless same has been lawfully prescribed for him by his physician. He shall give an account of his professional activities and his self drug use when visited by any representative of the Division including the Probation Surveillance Officer. On such visits Respondent shall produce any appropriate sample necessary for drug detection or drug treatment analysis."

IV

Demerol, also known as Pethidine, is a controlled substance, Schedule II, as defined in Section 11055, subdivisions (a) and (b)(14), of the Health and Safety Code.

V

On each of the nine occasions described in paragraph VIII of the Accusation and Petition to Revoke Probation, respondent falsely identified himself and, by fraud, deceit, misrepresentation

and subterfuge unlawfully obtained, at the Sacramento Medical Center, and from the named nurses, a total of 900 mg of Demerol.

VI

It is not true that respondent self-administered the Demerol obtained as shown in Finding V. It is true that he obtained the drug with the intention of ending his own life but changed his mind and destroyed the Demerol.

VII

Respondent is exceptionally well qualified as an anesthesiologist and has an excellent reputation in that field. He has had serious emotional problems for many years, generally because he does not consider himself as capable as he appears to others. This condition, described as a "success neurosis", led to the self-administration, on a limited number of occasions, and under stress, of Demerol in 1975 and to the disciplinary action described in Finding III.

VIII

Following the effective date of the 1977 Decision, respondent returned to the practice of anesthesiology. This is now recognized as a false step since it not only exposed him to the pressures inherent in the function of an anesthesiologist but also placed him in a setting in which drugs were easily accessible. The pressures became so severe that, even though he was at the time in active psychotherapy, respondent became suicidal. However, he eventually decided not to kill himself and destroyed the drugs he had collected to carry out his plan. He advised his therapist of what had happened and was placed on anti-depressants for several months. He has had a total of about 300 hours of therapy and has made good progress. It is estimated that another 200 hours of regular therapy will be required to complete the course of the present treatment. The prognosis is good.

IX

Respondent, who is Board certified as an anesthesiologist and who was selected to serve on the faculty of the School of Medicine of the University of California at Davis, now wishes to leave the field of anesthesiology. For about one year, and until the end of 1977, he functioned as a research fellow at the Davis school. Since the beginning of 1978, he had not practiced medicine. If permitted, he intends to practice direct, family medicine from now on. He has had substantial experience in this field and was offered a position at Sonoma State Hospital in which, under supervision and in a structured environment, he would deal with the general health problems of the resident patients. Respondent, who maintained himself between January and July by assisting his father in real estate management, had accepted this employment and intended to begin working at Sonoma

State Hospital in early July, 1978, a few days after the hearing, with the tentative approval Dr. Hoskins, the consultant to the Board who has been working with respondent during the period of probation.

X

Respondent intends to, and will be able to, continue the course of psychotherapy now in progress with John J. McCarthy, M.D., a member of the Davis faculty, and, if necessary, to travel between Sonoma State Hospital and Davis to do so.

DETERMINATION OF ISSUES

I

Respondent's conduct described in Finding V constitutes unprofessional conduct and thus cause for the revocation or suspension of the certificate described in Finding II under Sections 11173(a) of the Health and Safety Code and 2360, 2361, and 2391.5 of the Business and Professions Code.

II

Respondent's conduct described in Finding V constitutes cause for the revocation or modification of the stay of execution and the terms of the probation to which he is subject as described in Finding III in that his conduct is in violation of conditions of probation 1 and 5 as quoted in Finding III.

III

Respondent's conduct described in Finding VI does not constitute cause for the suspension or revocation of his Physician's and Surgeon's Certificate under Sections 2360, 2361 or 2390 of the Business and Professions Code, nor for the revocation or modification of the stay of execution under the condition of probation 6 as quoted in Finding III.

IV

The facts contained in Findings VII through X were considered in the formulation of the Order.

ORDER

A. Respondent's Certificate No. A-23463 is revoked, provided, however, that execution of the revocation is stayed and respondent is placed on fifteen (15) years' probation under the following terms and conditions:

1. Respondent shall comply with all laws of the United States and of the State of California, and its political subdivisions and all rules and regulations of the Board.

2. Respondent shall submit to the Division of Medical Quality (hereafter referred to as the "Division"), at quarterly intervals, and on forms provided by the Division, a declaration under penalty of perjury to the effect that he has fully and faithfully complied with all the terms and conditions of this probation and of any court-imposed probation to which he may be subject.

3. Within 90 days following the effective date of this decision, a medical consultant for the Division will send respondent written notice of the time, date and place for an initial interview to discuss the terms and conditions of probation. Respondent shall report in person to the medical consultant as requested, and, during probation, shall appear in person for subsequent interviews, to be held at least once a calendar year, as directed by the medical consultant or by the Division.

4. Respondent shall continue to undergo psychiatric therapy not less than twice monthly until 200 additional hours of therapy have been completed. Respondent shall be permitted to continue in the care of Dr. John J. McCarthy who has been treating him in connection with the probation to which respondent is now subject. In the event that respondent ceases to receive psychiatric care from Dr. McCarthy, he shall immediately so advise the Division and shall receive further treatment and examinations as herein provided only from a psychiatrist approved by the Division.

5. During the period of probation, respondent shall furnish to the Division quarterly psychiatric evaluations, rendered by a psychiatrist selected by the Division, of respondent's ability to conduct with safety to the public the practice of medicine. Respondent must undergo treatment if this is recommended.

6. Respondent shall not, during the period of probation, engage in the practice of anesthesiology.

7. Respondent shall engage in the practice of medicine only in a supervised, structured environment in which respondent's activities will be overseen and supervised by another physician. Respondent's plan for employment as a staff physician at Sonoma State Hospital under the conditions stated in Exhibit 3 in these proceedings is approved. Respondent shall immediately advise the Division of any change in the conditions of his employment at Sonoma State Hospital and shall not engage in the practice of medicine elsewhere without the prior written approval of the Division.

8. Respondent shall forthwith surrender for

cancellation his DEA permit together with any triplicate prescription forms and federal order forms to the Drug Enforcement Administration and shall provide documentary proof of that surrender within thirty days of being served with a copy of this Decision.

9. Respondent shall not prescribe, administer, dispense, or order controlled substances or dangerous drugs except for those drugs listed in Schedules IV and V in Sections 11057 and 11058 of the Health and Safety Code.

10. Respondent shall abstain completely from the personal use of controlled substances and dangerous drugs except those prescribed, administered or dispensed to him by another physician for a bona fide illness or condition.

11. Respondent shall comply immediately with any and all requests from the Division's designee to submit to biological fluid testing.

12. Respondent shall comply with the Division's probation surveillance program.

13. On reasonable notice, respondent shall appear in person for interviews with the Division's medical consultant.

14. In the event that respondent shall leave the State of California to reside or to practice outside the State, he shall immediately notify the Division of the dates of departure and return. Any period of residence or practice outside California shall not apply to the reduction of this probationary period.

15. In the event that the Division shall determine, after giving respondent notice and an opportunity to be heard, that during the period of probation respondent has failed to comply with any of the terms or conditions thereof, this stay may be vacated and the order of revocation may be made immediately effective, or, in the alternative, this order may otherwise be modified as appropriate.

16. Upon full compliance with the terms and conditions of probation and upon the expiration of the period of probation, respondent's certificate shall be reinstated, free and clear of the terms and conditions imposed herein.

B. The stay of execution and the terms and conditions of probation granted to respondent in the proceedings described in Finding III are hereby modified as follows:

1. The period of probation is extended to fifteen (15) years from the effective date of this order.

2. All other terms and conditions of probation are likewise modified to conform to the terms and conditions imposed under paragraph A. of this Order.

C. This decision shall become effective forthwith.

Dated: August 10, 1978.



MICHAEL J. CARELLA
Secretary/Treasurer
Division of Medical Quality